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ARIOSIA DIAGNOSTICS, INC.

24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**
26 **SAN FRANCISCO DIVISION**
27
28

STIPULATION

CASE NO. 3:12-CV-05501-SI
CASE NO. 3:14-CV-01921-SI
CASE NO. 3:15-CV-02216-SI

ILLUMINA, INC.,

Plaintiff,

v.

ARIOSIA DIAGNOSTICS, INC. and ROCHE
MOLECULAR SYSTEMS, INC.,

Defendants.

Lead Case No. 3:12-cv-05501-SI
Case No. 3:15-cv-02216-SI

**STIPULATION REGARDING
DISCOVERY AND DEFENDANT
ENTITIES**

STIPULATION

CASE NO. 3:12-CV-05501-SI
CASE NO. 3:14-CV-01921-SI
CASE NO. 3:15-CV-02216-SI

1 WHEREAS in the above-captioned litigation (“the Litigation”), Plaintiff Illumina, Inc.
2 (“Illumina”) has named as Defendants Ariosa Diagnostics, Inc. (“Ariosa”) and Roche Molecular
3 Systems, Inc. (“RMS”);

4 WHEREAS Illumina alleges in its First Amended Complaint (Case No. 3:15-cv-02216-SI,
5 Dkt. No. 17) that Ariosa is an alter ego or agent of RMS;

6 WHEREAS Ariosa and RMS have denied these allegations;

7 WHEREAS the parties desire to streamline issues in the Litigation and avoid unnecessary
8 discovery on Illumina’s alter ego and agency allegations; and

9 WHEREAS the parties agree that, subject to the terms of this Stipulation, Ariosa will be
10 deemed the party responsible for the conduct that Illumina has accused of infringing the asserted
11 claims of the patents-in-suit, including any such accused conduct by the Roche entities;

12 IT IS HEREBY STIPULATED by the parties hereto, subject to the approval of the Court,
13 as follows:

14 1. Solely for purposes of the Litigation, Illumina, Ariosa, and RMS agree that Ariosa
15 will be deemed the Defendant responsible for the conduct that Illumina has accused of infringing
16 the asserted claims of the patents-in-suit and Illumina need not put on proof regarding which specific
17 Roche entity (if any other than Ariosa) is responsible for such conduct, including any damages
18 caused by such conduct.

19 2. Solely for purposes of the Litigation, Ariosa and RMS agree that, to the extent
20 Illumina is relying on an act by or statement from Roche made on or after January 12, 2015 (which
21 is the date when Roche’s acquisition of Ariosa was completed), neither Ariosa nor RMS will object
22 to the admission of such statement in any proceeding in the Litigation, including trial, on the basis
23 of the corporate distinction between Ariosa and Roche. Ariosa and RMS reserve all rights to object
24 to any such proposed evidence for any other reason, including, without limitation, lack of relevance
25 or lack of foundation.

26 3. Illumina agrees that, in the Litigation, it will no longer pursue the alter ego and
27 agency theories alleged in its First Amended Complaint (Case No. 3:15-cv-02216-SI, Dkt. No. 17),
28

1 and further agrees to forego any further discovery regarding the relationship between Ariosa and
 2 any other Roche entity. Accordingly, RMS is dismissed from the Litigation but will be deemed a
 3 party to any judgment to the same extent as Ariosa.

4 4. The parties agree that Ariosa shall be permitted to pursue any defenses and
 5 counterclaims that have previously been raised by RMS in the Litigation, including, without
 6 limitation, the prior art invalidity defenses that remain available to RMS as a result of the Court's
 7 Order on Plaintiffs' motion to strike portions of Defendants' invalidity contentions (Case No. 3:12-
 8 cv-05501-SI, Dkt. 319) subject to any modifications to that Order made by the Court.

9 5. The parties agree that the jury in the Litigation shall not be advised of the fact of this
 10 stipulation or the fact that RMS has agreed to be deemed a party to any judgment to the same extent
 11 as Ariosa. The parties agree to defer, for resolution in the future, the issue of what should be
 12 communicated to the jury, whether by jury instruction or otherwise, with respect to the relationship
 13 between Ariosa and Roche. However, the parties agree that the jury may be informed that Ariosa
 14 is a Roche subsidiary.

15 6. This stipulation and order does not purport to regulate the arguments and evidence
 16 that may be submitted relating to the contractual counterclaims.

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 18
 19 Dated: April 28, 2017

WEIL, GOTSHAL & MANGES LLP

20 By: /s/ Edward R. Reines

21 Attorneys for Illumina

22
 23 Dated: April 28, 2017

IRELL & MANELLA LLP

24 By: /s/ Andrei Iancu

25 Attorneys for Ariosa Diagnostics, Inc.

26
 27 Dated: April 28, 2017

WILMER CUTLER PICKERING
 28 HALE AND DORR LLP

By: /s/ Robert J. Gunther

Attorneys for Roche Molecular Systems, Inc.

IT IS SO ORDERED.

Dated: _____, 2017

Honorable Susan Illston
United States District Judge